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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LUCAS BRUNO III, CHRISTOPHER	)	CIVIL NO. 03-00567 JMS BMK
GAHR, RANK ROBERT PAULSON,	)	
CHARLES TURNER, and TOM YOUNG,	)	DEFENDANT'S CONCISE STATEMENT
	)	OF MATERIAL FACT IN SUPPORT OF
Plaintiffs,	)	DEFENDANT'S MOTION FOR SUMMARY
	)	JUDGMENT ON THE CLAIMS OF
vs.	)	PLAINTIFF FRANK PAULSON;
	)	DECLARATION OF THOMAS DAQUANO;
MICHAEL CHERTOFF, Secretary,	)	DECLARATION OF THOMAS MULHERN;
DEPARTMENT OF HOMELAND	)	EXHIBITS "A" THROUGH "C";
SECURITY,	)	CERTIFICATE OF SERVICE
	)	
Defendant.	)	
	)	

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DEFENDANT'S CONCISE STATEMENT OF MATERIAL FACT  
IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON  
THE CLAIMS OF PLAINTIFF FRANK PAULSON

Pursuant to Local Rule 56.1, of the Local Rules of Practice for the United States District Court for the District of Hawaii, federal defendant hereby submits its separate concise statement of material facts in support of its motion for summary judgment. The motion is being filed contemporaneously with this statement.

FEDERAL DEFENDANT'S STATEMENT OF FACTS

FACTS

EVIDENTIARY  
SUPPORT

1. In February 2003, Tom Daquano, a personnel specialist at TSA offices in Arlington, Virginia, determined that in his employment application, Frank Paulson had stated that he had not been arrested in the past seven years. Daquano Decl., Para. 2; Ex. A.
2. In reviewing information provided by the Federal Bureau of Investigation, however, Daquano saw that in fact Paulson had been arrested twice in 1997, for theft and for battery. Based on this information, Daquano determined that Paulson was not suitable for employment with TSA. Daquano forwarded this determination to Thomas Mulhern at TSA's Employee Relations Division. Id.
3. In making the suitability determination, Daquano followed his office's standard procedures in performing suitability determinations, as governed by the relevant rules and guidelines from TSA and the Office of Personnel Management. Daquano was not influenced or contacted by anyone in Hawaii regarding the Paulson suitability determination. He made the determination without regard to his race or age, and in fact would not have been aware of his race or age. Daquano Decl., Para. 3.
4. Upon receipt of Daquano's unsuitability determination, Mulhern's office began the process of terminating Paulson's employment. Under the applicable rules and policies, termination was an automatic consequence of an unsuitability determination. Mulhern Decl., Para 3.
5. Mulhern signed a termination letter prepared by his office on March 13, 2003. The termination letter was sent to Kahului Airport in Maui, HI for delivery to Mr. Paulson. Mulhern Decl., Para. 5; Ex. B.
6. Paulson received the letter on March 20, 2003. Ex. B.

7. Mulhern had no knowledge of Mr. Paulson's race or age at the time of his termination. Mr. Paulson was terminated based on material intentional false statement or deception or fraud in examination or appointment for not disclosing his previous arrests on the Standard Form 85P. Mulhern was not influenced or contacted by anyone in Hawaii regarding the Paulson employment determination. No one in Hawaii had authority to reverse or revise the determination made in Washington regarding Mr. Paulson's termination.

Mulhern  
Decl.,  
Para. 6.

8. At the time of his termination, Paulson was 39 years old.

Ex. C (indicating  
birthdate of April 3,  
1963 in block 3).

DATED: February 24, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

/s/ Thomas A. Helper  
By \_\_\_\_\_  
THOMAS A. HELPER  
Assistant U. S. Attorney

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CHARLES TURNER, and TOM YOUNG,	)	CERTIFICATE OF SERVICE
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
MICHAEL CHERTOFF, Secretary,	)	
DEPARTMENT OF HOMELAND	)	
SECURITY,	)	
	)	
Defendant.	)	
_____	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the method of service noted below, a true and correct copy of the foregoing document was served on the following at their last known address:

**Served by First-Class Mail**

Eve M. Green, Esq.  
Law Office of Eve M. Green  
58 Central Avenue  
Wailuku, HI 96793

**February 24, 2006**

Michael J. Green, Esq.  
Debra Akemi Kagawa, Esq.  
Denise M. Hevicon, Esq.  
Queen Street Building  
345 Queen Street, 2<sup>nd</sup> Floor  
Honolulu, HI 96813

Attorneys for Plaintiffs

DATED: February 24, 2006, at Honolulu, Hawaii.

/s/ Myra Y. Peterson

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